**HON'BLE SRI JUSTICE R.SUBHASH REDDY**

**WRIT PETITION NO : 23819 of 2001**

**Dated 26th September, 2007**

Between
Vasundara Cooperative Urban Bank Limited,
Rep. By its Chief Executive Officer,
Habsiguda, Hyderabad.

…Petitioner

and

Sales Officer, (Cooperative Sub Registrar)
AP State Cooperative Bank Limited,
III Floor, Troop Bazar, Hyderabad, and, ors

…Respondents.

**THE HON'BLE MR JUSTICE R.SUBHASH REDDY**

**WRIT PETITION NO : 23819 of 2001**

**ORDER:**

In this Writ Petition, the petitioner, Vasundara Cooperative Urban Bank Limited, has questioned the notice No. ARC.1/2000/Hou, published on 13-11-2001 in the Enadu Telugu daily news paper, by which, the immovable property i.e. First Floor in H.No.3-2-119, covered by Plot No. 173, along with undivided share of land admeasuring 90 square yards situate in Sy.Nos. 5/1,6,7 and 8 of S.B.H.Colony, L.B.Nagar, Saroornagar Mandal in Ranga Reddy District was put to public auction.

The fourth respondent had secured loan from the second respondent-AP State Cooperative Bank Limited. When he failed to

repay the loan amount, the second respondent-bank filed an arbitration case in ARC.No. 1/2000(hou) on the file of the Cooperative Sub-Registrar/Arbitrator and obtained decree in his favour. For the execution of the said decree, the second respondent-bank filed E.P.No.111/01/H and the above said property was attached and proposed for sale. Pursuant to the said proceedings, the petitioner-bank filed a claim petition before the first respondent-Sales Officer stating that third respondent had taken loan of Rs.8.00 lakhs on 22-11-1999, to which, fourth respondent herein is one of the guarantors and his property was mortgaged and an amount of Rs.11,06,506/- is payable by respondents 3 and 4. In the said claim petition, it was stated that the title deeds of the property owned by the fourth respondent are with them and as such, the said house property cannot be sold in EP.No.111/01/H. When the said claim petition was not considered, the petitioner-bank approached this Court.

In this Writ Petition, it is the case of the petitioner that as much as the claim is already filed pursuant to the advertisement for sale issued by the second respondent for execution of the decree obtained by it, it is obligatory on the part of the first respondent to adjudicate its claim.

On the other hand, it is submitted by the learned Counsel appearing for the respondents that the mortgage of the property of the fourth respondent in favour of the second respondent was at earlier point of time, i.e. on 31-7-1999, whereas, the mortgage in favour of the petitioner-bank was subsequent to the same, i.e. on 22-11-1999, and, i that view of the matter, it is not necessary to adjudicate the claim of the petitioner-bank.

It is not in dispute that sale notice 5-11-2001 is issued by the first respondent to execute the decree obtained by the second respondent-bank in ARC.No. 1/2000(hou). Rule 52 of the A.P. Cooperative Societies Rules, 1964 provides procedure for execution of decrees, decisions or orders passed by the competent authority under the AP Cooperative Societies Act, 1964. A reading of the Rule 21(a)(b) of the AP Cooperative Societies Rules, 1964, makes it clear that when a claim or an objection relating to the property advertised for sale has been filed, the Sale Officer may postpone the sale pending the investigation of the claim or objection. In this case, it is the case of the petitioner that they have the property mortgaged by the fourth respondent, which is the subject matter of sale. On the other hand, it is the case of the second respondent that the said documents were mortgaged with them for the loan obtained by the fourth respondent and the same is much earlier to 22-11-1999. However, it is submitted by the learned Counsel for the petitioner that though sale notice was issued and advertised, but however, sale is not conducted on account of the orders of restraint from the Debt Recovery Tribunal obtained by one other decree holder with regard to same property. As much as the said bank-decree holder is not before this Court, there is no need to go into the claim of the said bank. However, as no orders have been passed on the claim petition filed by the petitioner-bank pursuant to the sale notice dated 5-11-2001, which was published in the news papers on 13-11-2001, I dispose of the Writ Petition directing the first respondent to adjudicate the claim petition filed by the petitioner, before taking any further steps for sale of the property i.e. First Floor in House No.3-2-119, Plot No. 173, with undivided share of land admeasuring 90 square yards, covered by Sy.No.5/1,6,7 & 8, situate at

S.B.H.Colony, LB Nagar, Saroornagar Mandal, Ranga Reddy District. Till appropriate orders are passed on the claim petition of the petitioner, no further steps shall be taken pursuant to the sale notice dated 5-11-2001.

Subject to the above direction, the Writ Petition is disposed of. No order as to costs.

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*JUSTICE R. SUBHASH REDDY*

DATE: 26-9-2007.
Msnr.